

Oregon Law Institute
of Lewis & Clark Law School

NEPA Practice: 2005 Update

A TWO-DAY WORKSHOP on preparing, reviewing, challenging, and defending documents prepared under the National Environmental Policy Act. Attendees will receive a copy of *The NEPA Book* co-authored by Ron Bass *and* a 600 plus page compilation of NEPA case lists and models prepared by Owen Schmidt.

Instructors:

Ron Bass, M.A., J.D., AICP
*Jones & Stokes, Principal and
Environmental Counsel*

Owen Schmidt, M.A., J.D.
*U.S. Department of Agriculture,
Office of the General Counsel*

**WEDNESDAY, OCTOBER 5 and THURSDAY,
OCTOBER 6, 2005**

Oregon Convention Center
777 NE Martin Luther King Jr., Blvd.
Portland, Oregon

13 MCLE Credits in Oregon

Program Schedule

Except for the beginning and end, all times are estimates and may change based on class discussion.

WEDNESDAY, OCTOBER 5

8:00 a.m. LATE REGISTRATION AND DISTRIBUTION OF MATERIALS

8:25 WELCOME

8:30 - 8:45

Introduction to Course

- Objectives
- Speakers
- Materials
- Agenda

8:45 - 9:15

NEPA's Overall Legal and Regulatory Framework

- Introduction and overview of NEPA
- Congressional intent
- Goals and policies of NEPA
- Agency roles
- CEQ and federal agency regulations
- Steps in the NEPA process

9:15 - 11:45

Writing the Perfect FONSI

There will be a 15-minute break during this session

- Ultimate conclusions
- Basic conclusions
- Evidence
- Reasons

11:45 - 1:00 LUNCH (on your own)

1:00 - 1:30

Mitigated FONSI: Use and Misuse

- Definition and purpose
- When the courts will support a Mitigated FONSI
- Public notice of availability
- Advantages and disadvantages of Mitigated FONSI

1:30 - 2:30

Preparation and Review of NEPA Documents

- Participants and stakeholders in the NEPA process
- Role of CEQ and EPA
- Council on Environmental Quality NEPA regulations
- Implementation by federal agencies
- Types of Environmental Impact Statements
- Who may prepare a NEPA document
- Key steps in preparing documents
 - Commencing the EIS: Notice of Intent
 - Effective scoping: What CEQ recommends
 - Preparing the draft EIS
 - Public review and commenting
 - Preparing and circulating the final EIS
 - The record of decision
- When to prepare a supplement to an EIS

2:30 - 2:45 BREAK

2:45 - 4:15

Writing the Perfect EA or EIS

- Proposal for action
- Need underlying the proposal
- Action alternatives
 - Alternative places to go
 - Alternative ways to get there
- No-action alternative
- Mitigation not included in the proposal
- Decision factors

4:15 - 4:30

Review of Issues Covered During Day One

THURSDAY, OCTOBER 6

8:30 - 8:35

Summary of First Day and Review of Second Day Materials

8:35 - 10:00

Writing the Perfect EA or EIS, Continued

- Actions
 - Reasons to lump
 - Reasons to split
- Impacts
 - Direct, indirect, and cumulative
 - Increments to past, other present, and reasonably foreseeable future actions
 - The perfect cumulative impacts analysis

10:00 - 10:15 BREAK

10:15 - 10:45

Developing Adequate and Feasible Mitigation Measures

- What constitutes an adequate mitigation measure?
- When is a mitigation measure feasible?
- Making mitigation effective and enforceable
- Examples of adequate and inadequate mitigation
- Monitoring mitigation

10:45 - 12:00

Integrating NEPA with Other Environmental Laws

- Determining which environmental requirements are applicable
 - State Environmental Impact Laws
 - Endangered Species Act
 - National Historic Preservation Act
 - Section 404 of the Clean Water Act
 - Other requirements
- Ten-step approach to successful integration

12:00 - 1:15 LUNCH (on your own)

1:15 - 2:15

Writing the Perfect EA or EIS, Continued

- Administrative record
- Wrap-up of sample NEPA document

2:15 - 2:30 BREAK

2:30 - 3:00

Evaluating Environmental Justice under NEPA

- What is environmental justice
- Executive Order 12898
- CEQ guidance
- Agency programs to implement E.O.12898
- Evaluating and identifying “injustice” impacts under NEPA

3:00 - 4:00

NEPA Decision Making, Appeals, and Litigation

- Review of decision-making process
- Administrative appeals—varying agency procedures
- Importance of the courts in NEPA enforcement
- Trends in NEPA litigation
- Overview of the NEPA litigation process
- Judicial standards of review

4:00 - 4:30

NEPA's Effectiveness

4:30 p.m. ADJOURN

UNLOCKING THE SECRETS OF NEPA

The National Environmental Policy Act (NEPA) is paramount among our nation's environmental laws. It applies whenever agencies of the federal government take action and whenever these agencies fund or approve the actions of others. The procedures required by NEPA often form the only administrative record of federal decision making. These procedures, when not performed correctly, have become legendary as the basis for stopping federal actions. Using unique models for compliance, this workshop will help unlock the secrets of successful NEPA compliance. The instructors will cover the key procedural requirements in the NEPA process, including how to determine when NEPA applies, deciding whether to prepare a FONSI or EIS, determining the scope and content of NEPA documents, integration of NEPA with other laws, and how the courts have interpreted NEPA.

WHO SHOULD ATTEND?

Whether you work for an agency of the federal government, need a permit, grant, or approval from a federal agency, or are otherwise interested in federal decision making, you need to know about NEPA. This workshop is designed to serve both as a comprehensive introduction for those new to NEPA and a refresher for more experienced professionals. The course is beneficial to federal agency staff and decision makers, attorneys, consultants, and members of environmental organizations, as well as interested citizens who are concerned about the environmental effects of federal decisions. Up-to-date case lists will be valuable to any NEPA practitioner. Even those who have worked with NEPA their entire careers will stand to learn more about the secrets to successful NEPA compliance.

INSTRUCTORS

Ron Bass, M.A., J.D., AICP is a Principal and Environmental Counsel with Jones & Stokes, a major west coast consulting firm providing services in environmental planning and natural resources management. Mr. Bass is an attorney and planner with extensive background in NEPA compliance. He is a co-author of *The NEPA Book*, *The CEQA Deskbook*, and a frequent lecturer on environmental impact assessment.

Owen Schmidt, M.A., J.D. is a Senior Counsel with the Office of the General Counsel of the U.S. Department of Agriculture in Portland, Oregon. He specializes in providing NEPA advice to the agencies of the Department, including the Natural Resource Conservation Service and the Forest Service.

COURSE MATERIALS

Persons attending the course will receive a copy of *The NEPA Book* co-authored by workshop instructor Ron Bass. This illustrated, user-friendly guide to NEPA contains the latest information and guidance about NEPA practice. Additionally, attendees will receive a copy of Owen Schmidt's unique and up-to-date 600 plus page compilation of NEPA case lists and models.

MCLE CREDIT

NEPA Practice: 2005 Update will receive 13 MCLE Credits in Oregon.

QUESTIONS?

Please call OLI at (503) 768-6580 in Portland or toll-free in Oregon at (800) 222-8213, e-mail us at oli@lclark.edu; or visit our Website at www.lclark.edu/org/oli.

NEPA Practice: 2005 Update

Wednesday and Thursday, October 5 and 6, 2005

Name

OSB No. or Profession

Firm/Organization

Street Address

City/State/Zip

Phone

Fax

E-Mail

EARLY BIRD TUITION *(Received by September 28, 2005.)*

☐ \$395 or ☐ \$325 for government employees

REGULAR TUITION *(Received after September 28, 2005.)*

☐ \$425 or ☐ \$355 for government employees

OPTIONAL LUNCHES AND ROUNDTABLE DISCUSSION

☐ \$20 Wednesday, 10/5/05

☐ \$20 Thursday, 10/6/05

☐ Vegetarian ☐ Dietary restrictions: _____

ENCLOSED IS \$ _____ BY:

☐ Check payable to Oregon Law Institute (OLI)

☐ Credit Card: Acct. # _____

☐ VISA ☐ MasterCard

Exp. Date: _____ Signature: _____

Return this form with payment to:
OLI Registrar, Solomon Courthouse
620 S.W. Main St., Suite 706
Portland, OR 97205-3037

...or fax this registration form including credit card
information to: (503) 768-6585.

QUESTIONS? Call (503) 768-6580 or (800) 222-8213.
Check out our website at www.lclark.edu/org/oli
or email us at oli@lclark.edu.

CONFIRMATION: Confirmation will be sent via e-mail or fax.

CANCELLATION POLICY: Tuition minus a \$50 handling charge will be refunded if the cancellation request is *written and received* by September 30, 2005.

NEED ASSISTANCE: If you are a person with a disability, please let OLI know in time to make any necessary accommodations for you.

TUITION ASSISTANCE: A limited number of scholarships are available based on financial need. Contact OLI.